

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-053880

06/07/2011

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT

C. Smothers

Deputy

IN RE THE MATTER OF  
KRISTEN ESPINOZA

KRISTEN ESPINOZA  
7766 E ASTER DR  
SCOTTSDALE AZ 85260

AND

JEREMY JUZWINSKI

JEREMY JUZWINSKI  
8665 E ROOSEVELT CIR  
SCOTTSDALE AZ 85257

FAMILY COURT SERVICES-CCC

MINUTE ENTRY

The Court took the issues of child custody, parenting time, and child support under advisement at the Evidentiary Hearing held May 31, 2011. Having considered the evidence and testimony presented, the Court makes the following findings and orders:

**Jurisdictional Findings**

**THE COURT FINDS** that the parties have one minor child in common: Kellen Jazwinski (DOB: 1/28/2009). The parties and the minor child have resided in Arizona continuously for at least the six months preceding the filing of the petition to establish child custody, parenting time, and child support. This Court, therefore, has jurisdiction as Arizona is the "home state" of the minor child. *See* A.R.S. § 25-1031.

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**Parent Education Program**

The domestic relations education provisions of A.R.S. § 25-352 have been satisfied.

**Best Interest Findings: A.R.S. § 25-403**

The best interests of a child is the primary consideration in awarding child custody. *Hays v. Gama*, 205 Ariz. 99, 102, ¶ 18, 67 P.3d 695, 698, ¶ 18 (2003). The child's best interest is paramount in custody determinations. Section 25-403(A) enumerates specific factors for the Court to consider, among other relevant factors, in making a determination concerning a child's best interests. See A.R.S. § 25-403(A) ("The Court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The Court shall consider all relevant factors including [the ten factors enumerated in the subsection].").

In making a custody determination, the Court is mindful that as a matter of public policy, absent evidence to the contrary, "it is in a child's best interest: (1) To have substantial, frequent, meaningful and continuing parenting time with both parents [; and] (2) To have both parents participate in decision-making about the child." See A.R.S. § 25-103(B).

Pursuant to A.R.S. § 25-403,

**THE COURT FINDS** as follows regarding the child's best interests:

*1. The wishes of the child's parent or parents as to custody.*

Both parents agreed that joint custody was in the child's best interest as reflected in the parties' parenting plan adopted by the Court. Father wishes to have the child for additional overnight parenting time. Mother would like to have as much parenting time with the child as possible. Mother wishes to be the primary residential parent for the child.

Mother would prefer that the child not have overnight parenting time with Father. Mother has concerns about the child's safety while in his Father's care. Mother is concerned about Father's use of alcohol. Mother's other concerns are limited to the fact that Father does not have a pool fence and that Father takes the child to his place of business which exposes the child to people drinking alcohol and potential violence.

Father has taken steps to secure the doors on his home because he has not installed a pool fence. Father has investigated the cost to install a pool fence but has not proceeded

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because his home is in the short sale process. Father limits the time that the child spends at his place of business.

*2. The wishes of the child as to the custodian.*

The child is only two years old and is unable to express his wishes. The Court presumes that the child wishes to spend considerable time with both of his parents.

*3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.*

The child has no siblings. Father does not have any close extended family. Mother currently lives with her extended family. The child spends a significant amount of time with maternal grandfather and a maternal aunt who both provide child care for both Mother and Father. Father does not have a network of caregivers for the child.

*4. The child's adjustment to home, school and community.*

The child is too young for the Court to make a determination about school and community. The child spends time with both parents at their respective homes on a regular basis. The child has his own room at both homes. No further evidence was provided on this point.

*5. The mental and physical health of all individuals involved.*

Both Father and Mother admit that they consume alcohol on a social basis. Father has sought treatment related to prior alcohol use. Father works in an industry where alcohol is often present and this has been the case for most of his adult life. Father did have a period of sobriety but admits relapsing within the last year.

No other issues were presented with respect to the physical and mental health of either parent. The Court finds that both parents are capable of parenting the child.

*6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.*

Both parents are likely to allow contact with the other parent. Mother has concerns about Father's history of drinking alcohol and is less inclined to allow Father to have frequent and meaningful contact for that reason.

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*7. Whether one parent, both parents, or neither parent has provided primary care of the child.*

Both parents have provided primary care of the child. The child lived with both parents for a significant portion of his short life. Under the recent agreement of the parties, the Court finds that Mother is primary care provider.

In addition to the foregoing, the Court must also consider any history of domestic violence (A.R.S. § 25-403(A)(11) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05).

**THE COURT FINDS** that there are no alleged acts of domestic violence or of any of the specific criminal convictions.

**THE COURT FURTHER FINDS** that there was no coercion or duress used by a parent in obtaining an agreement regarding custody and either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.

**Legal Custody**

The parties entered into an Agreement for Custody and Parenting Time Partial Agreement dated February 2, 2011. The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor child.

**THE COURT FINDS** both parents love their child and desire to be a significant part of his life. Both parents are capable of co-parenting the child.

**THE COURT FURTHER FINDS** that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

**THE COURT FURTHER FINDS** that it is in the child's best interest that Mother and Father be awarded joint legal custody of Kellen Jazwinski (DOB: 1/28/2009).

**IT IS THEREFORE ORDERED** awarding Mother and Father joint legal custody of Kellen Jazwinski (DOB: 1/28/2009). Mother shall be designated as the primary physical

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custodian of the child. The minor child shall reside with Mother at all times except for parenting time specifically provided to Father.

**IT IS FURTHER ORDERED** adopting the Agreement for Custody and Parenting Time Partial Agreement dated February 2, 2011.

**IT IS FURTHER ORDERED** as a term of the overall custody orders, parenting time shall be exercised consistent with the Agreement for Custody and Parenting Time Partial Agreement dated February 2, 2011. Additionally, Mother and Father shall exercise non-holiday and non-vacation time as follows:

Father shall exercise his parenting time beginning Wednesday at 8:00 a.m. through Friday at 5:00 p.m. and Monday from 12:00 p.m. until 9:00 p.m. The remaining time, Mother shall exercise her parenting time. The parent receiving the child for his or her parenting time shall provide the transportation, unless otherwise agreed to by the parties.

Given the parents' respective living arrangements and the distance between the two homes, the parties will need to review the parenting time schedule when the child begins school.

**Child Support**

**THE COURT FINDS** that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

**THE COURT FURTHER FINDS** that no deviation is appropriate regarding the obligation to pay child support.

**IT IS THEREFORE ORDERED** that Father shall pay to Mother as and for child support the sum of **\$422.99** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing July 1, 2011 by Wage Assignment.

**LET THE RECORD REFLECT** that an Electronic Order of Assignment is issued.

**IT IS FURTHER ORDERED** that at any time an Order of Assignment is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

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All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

**Insurance and Unreimbursed Medical Expenses**

**IT IS FURTHER ORDERED** that Father shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 50% by Father and 50% by Mother.

With regard to unreimbursed medical, dental, and vision expenses,

**IT IS ORDERED** that except for good cause shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

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**Tax Deduction for Kellen Jazwinski As A Dependent**

**IT IS ORDERED** that Father may claim the eligible dependent for tax purposes for the years 2011 and 2012. Mother may claim the eligible dependent for tax purposes in 2013 and every third year thereafter.

**IT IS FURTHER ORDERED** that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the child for tax purposes, Father shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that Father receives, which shall be applied first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage.

**Exchange of Income Information**

**IT IS FURTHER ORDERED** that the parties shall exchange income information on every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HONORABLE DANIELLE J. VIOLA

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JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Child Support Worksheet; Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.